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Report of the Special Rapporteur on the rights of indigenous peoples

Note by the Secretariat

The Secretariat has the honour to present to the Human Rights Council the report of the Special Rapporteur on the rights of indigenous peoples, prepared pursuant to Council resolution 33/12. In the report the Special Rapporteur briefly refers to the activities undertaken since the submission of her last report, provides a thematic study on attacks against and the criminalization of indigenous human rights defenders and reflects on available prevention and protection measures. She concludes with recommendations on how various stakeholders can prevent violations and improve protection.

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I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Council resolution 33/12. In the report the Special Rapporteur briefly refers to the activities undertaken since the submission of her last report (A/HRC/36/46), provides a thematic study on attacks against and the criminalization of indigenous human rights defenders and reflects on available prevention and protection measures. She concludes with recommendations on how various stakeholders can prevent violations and improve protection.

II. Activities of the Special Rapporteur

2. Since she presented her last report to the Human Rights Council, the Special Rapporteur has carried out two official country visits: to Mexico from 8 to 17 November 2017 (A/HRC/39/17/Add.2) and to Guatemala from 1 to 10 May 2018 (A/HRC/39/17/Add.3).

3. A more detailed description of activities is contained in the Special Rapporteur's report to the General Assembly (A/72/186), in which she highlighted recent thematic work on indigenous peoples' right to self-governance; consultation and free, prior and informed consent; indigenous peoples in isolation and initial contact; country visits; communications; and other activities.

III. Attacks against and criminalization of indigenous peoples defending their rights

A. Introduction

4. The Special Rapporteur on the rights of indigenous peoples is gravely concerned at the drastic increase in attacks and acts of violence against, criminalization of and threats aimed at indigenous peoples, particularly those arising in the context of large-scale projects involving extractive industries, agribusiness, infrastructure, hydroelectric dams and logging. These violations are occurring in the context of intensified competition for and exploitation of natural resources, as observed during country visits and reflected in the increasing number of related allegations. In several countries, increased militarization adds to the threats against indigenous peoples. The Special Rapporteur has therefore decided to prepare a thematic report to draw attention to the escalation of these concerns.

5. The focus of the present report is on the distinctive characteristics of attacks against and criminalization of indigenous peoples defending their rights under the United Nations Declaration on the Rights of Indigenous Peoples and under human rights treaties, with emphasis on violations occurring in the context of development projects. In the report the Special Rapporteur considers the collective and individual impact on indigenous peoples and assesses the effectiveness of prevention and protective measures, identifying good practices and prevailing challenges with regard to protective measures for indigenous peoples. The Special Rapporteur notes that indigenous peoples are subjected to criminalization in a range of contexts including structural racism and discrimination, areas which may be the subjects of future analysis and reports.

6. In accordance with the mandate, the Special Rapporteur has continuously addressed in her country reports, communications to Governments, press releases and other public statements concerns over indigenous leaders and members of indigenous communities, and those who seek to defend their rights, who are subject to undue criminal prosecution and other acts, including direct attacks, killings, threats, intimidation, harassment and other forms of violence.

7. Concerns have also been raised by other United Nations human rights mechanisms, including other special procedures and human rights treaty bodies. The Special Rapporteur on the situation of human rights defenders has documented acts of violence, stigmatization and criminalization targeting persons engaged in the defence of environmental and land rights, including in many cases indigenous leaders and community members (A/71/281). While several reports in recent years have referred to the situation of criminalization and the risks environmental human rights defenders face, the reports have not specifically addressed these concerns through the optic of indigenous peoples' rights nor focused on the collective impact on indigenous communities (ibid.),[1] a lacuna the present report seeks to fill.

B. Methodology

8. In preparing the present report the Special Rapporteur has drawn from both primary and secondary sources. Information received first-hand during country visits as well as communications sent by the mandate on alleged violations have informed the report.[2]

9. In order to consult a broad range of actors, the Special Rapporteur launched a public call for inputs on the subject of attacks against and criminalization of indigenous peoples and their collective impact on communities and on the available prevention and protection measures. In response, over 70 written submissions were received, primarily from indigenous and human rights organizations from various regions, the majority from Latin America. The report also draws on a review of the wealth of reports on related aspects of the subject issued by civil society, human rights mechanisms, including regional human rights systems, and independent national human rights institutions.

10. Furthermore, the Special Rapporteur convened a two-day expert consultation in Geneva on 19 and 20 March 2018 on the issue of criminalization and attacks faced by indigenous peoples who seek to defend and assert their rights. The consultation provided a space for dialogue between representatives of indigenous peoples, civil society organizations and human rights mechanisms to address the particular risks faced by indigenous peoples, their causes and consequences as well as courses of action for improving the protection of indigenous peoples. In addition, a consultation with indigenous representatives took place in April 2018 on the sidelines of the Permanent Forum on Indigenous Issues.

IV. Normative framework

11. An understanding of the nature of indigenous peoples' rights is necessary to the discussion of the measures required to provide access to justice and reparations and other human rights guarantees in the context of attacks, criminalization and other acts faced by indigenous peoples as a consequence of their efforts to assert and defend their rights.

12. Attacks and criminalization affect a wide range of human rights. The causes and impacts of criminalization and violence affecting indigenous peoples must be understood and addressed within the particular framework of the United Nations Declaration on the Rights of Indigenous Peoples and international and regional human rights instruments. These international legal sources recognize indigenous peoples' rights to self-determination and to their traditional lands, territories and natural resources, self-government, cultures and ways of life. For indigenous peoples, most of these and other human rights are enjoyed collectively, reflecting the special relationship with their traditional lands, territories and natural resources which forms the basis of their collective identity and their physical, economic and cultural survival.

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[1] See also Inter-American Commission on Human Rights, *Report on the Criminalization of Human Rights Defenders* (2015).

[2] Information on all communications sent by the mandate holders can be consulted at https://spcommreports.ohchr.org/.

13. The State's responsibility to protect the rights to life, liberty and security of person is enshrined in article 3 of the Universal Declaration of Human Rights, in articles 6 (1) and 9 (1) of the International Covenant on Civil and Political Rights and in article 7 of the United Nations Declaration on the Rights of Indigenous Peoples. Both negative and positive obligations are included: on the one hand, States must refrain from violating the rights of human rights defenders while on the other hand, they should act with due diligence to prevent and investigate human rights violations and bring the perpetrators to justice. Also of relevance is article 30 of the United Nations Declaration, which affirms that military activities shall not take place in the lands or territories of indigenous peoples unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

14. Article 9 of the Covenant sets out the guarantees that no one shall be subjected to arbitrary arrest or detention and that no one shall be deprived of their liberty except on grounds established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for their arrest and brought promptly before a judge and tried within a reasonable time or released. It shall not be the general rule that persons awaiting trial shall be detained in custody.

15. The right to due process and a fair trial enshrined in article 14 of the Covenant stipulates that all persons are equal before the courts, are entitled to a fair and public hearing by a competent, independent and impartial tribunal and have the right to be presumed innocent until proved guilty. Everyone has the right to be tried without undue delay, to free legal counsel and free assistance of an interpreter if they cannot understand the language used in court. The United Nations Declaration on the Rights of Indigenous Peoples sets out in article 13 that States shall take effective measures to ensure that the right to indigenous languages is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation. International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) specifies in article 10 that preference should be given to sanctions other than imprisonment when criminal punishments are imposed on indigenous persons.

16. Self-determination is an overarching right of utmost importance for indigenous peoples as it affirms their right to freely pursue their economic, social and cultural development. The right to self-determination is enshrined in common article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and in article 3 of the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms recognizes the legitimacy of the defence of land rights by acknowledging the "valuable work" of human rights defenders in the elimination of violations, including those resulting from "the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources".

17. The failure to ensure land rights constitutes the core underlying cause of violations of indigenous peoples' rights. The United Nations Declaration on the Rights of Indigenous Peoples affirms the right of indigenous peoples to own and control their lands and territories in articles 25, 26, 27 and 32 while ILO Convention No. 169 enshrines territorial rights for indigenous peoples in articles 14–19.

18. The right to development is affirmed in several provisions of the United Nations Declaration on the Rights of Indigenous Peoples, notably in article 32, which states that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. The Declaration furthermore affirms that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to adopting and implementing legislative or administrative measures that may affect them; their free and informed consent should also be obtained prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of

mineral, water or other resources (arts. 27 and 32). In its jurisprudence, the Human Rights Committee has underlined that indigenous peoples' right to participate goes beyond consultation: "participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community".[3]

19. The rights to peaceful assembly and to freedom of association are set out in articles 21 and 22 of the International Covenant on Civil and Political Rights while the right to participation in the conduct of public affairs and decision-making is enshrined in article 25. The United Nations Declaration on the Rights of Indigenous Peoples furthermore affirms that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions (arts. 5, 18, 20, 27 and 34).

20. The provision of and access to information are prerequisites to ensuring that indigenous peoples can participate in consultation processes. Article 19 (2) of the Covenant guarantees the right to "seek, receive and impart information" as part of the right to freedom of expression.

21. Before consultations can be carried out in relation to any proposed projects, States must ensure that human rights and environmental impact assessments have been undertaken. Binding legal obligations in this regard exist in the Convention on Biological Diversity (art. 14 (1) (a)), which requires States to undertake "environmental impact assessment of [their] proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and … allow for public participation in such procedures". The United Nations Framework Convention on Climate Change (art. 4 (1) (f)) similarly affirms the obligation for States to employ impact assessments of projects or of measures undertaken by them to mitigate or adapt to climate change, with a view to minimizing adverse effects on public health and on the quality of the environment. Both these treaties have almost universal adherence, with 196 and 197 parties, respectively.

22. The Rio Declaration on Environment and Development, adopted in 1992, sets out in principle 10 that everyone shall have access to information, including on activities in their communities, that States shall facilitate the opportunity to participate in the decision-making process and that effective access to justice, including redress and remedy in environmental matters, shall be provided. The United Nations Environment Programme (UNEP) has underlined the importance of these "access rights" in promoting transparent, inclusive and accountable environmental governance.[4]

23. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment has emphasized that in order to protect human rights, assessments of environmental impacts should also examine the possible impacts of proposed projects and policies on the enjoyment of all relevant rights, including the rights to life, health, food, water, housing and culture. Such assessments should provide meaningful opportunities for the public to participate, should consider alternatives to the proposal and should address all potential environmental impacts, including transboundary effects and cumulative effects that may occur as a result of the interaction of the proposal with other activities; the assessment should result in a written report that clearly describes the impacts; and the assessment and the final decision should be subject to review by an independent body (A/HRC/37/59). For indigenous peoples, this obligation requires that the information contained in the human rights impact assessment be available in their languages and in a culturally appropriate form.

24. The State's obligation to provide an effective remedy for human rights violations is enshrined in article 2 (3) (a) of the International Covenant on Civil and Political Rights. This requires that perpetrators be brought to justice and that victims be provided with

[3] *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006), para. 7.6.

[4] "UNEP: implementing principle 10 of the Rio Declaration", UN Environment, 19 August 2016.

reparation.[5] The United Nations Declaration on the Rights of Indigenous Peoples (art. 40) affirms that indigenous peoples have the right to access to, and to prompt decisions through, just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such decisions shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and to international human rights.

25. Furthermore, article 8 of the United Nations Declaration on the Rights of Indigenous Peoples sets out the right to effective mechanisms for prevention of, and redress for, actions which have the aim or effect of dispossessing indigenous peoples of their lands, territories or resources. Article 10 stipulates that indigenous peoples shall not be forcibly removed from their lands unless they have provided their free, prior and informed consent. Should violations have occurred, victims have the right to fair redress, including restitution and compensation, and, where possible, the option of returning to their lands. When this is not possible, they are entitled to just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned or otherwise occupied or used and which have been confiscated, taken, occupied, used or damaged. Compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress (art. 28).

26. Transnational corporations and other business enterprises should respect human rights, as set out in the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, which rest on three pillars: the State duty to protect against human rights abuses by third parties, including businesses; the corporate responsibility to respect human rights; and the need for access to an effective remedy for victims of business-related human rights abuses. Principle 18 requires that business enterprises identify and assess any actual or potential adverse human rights impacts through meaningful consultation with potentially affected groups as an integral part of their responsibility to respect human rights.

V. Root causes and drivers behind attacks and criminalization

27. The intensified competition over natural resources led by private companies, at times with government complicity, has placed indigenous communities seeking to protect their traditional lands at the forefront as targets of persecution.

28. As documented by the Special Rapporteur, instances of criminalization and violence arise, in most cases, when indigenous leaders and community members voice opposition to large projects relating to extractive industries, agribusiness, infrastructure, hydroelectric dams and logging. In other instances, indigenous peoples' ways of life and subsistence are deemed illegal or incompatible with conservation policies, leading to the prohibition of indigenous traditional livelihoods and the arrest, detention, forced eviction and violations of other human rights of indigenous peoples. This topic was explored in her report to the General Assembly (A/71/229). An additional emerging concern is the rush to undertake climate change adaption and mitigation measures which, unless they build in human rights safeguards, risk undermining the rights of indigenous peoples. The Special Rapporteur explored this issue in a previous report to the Human Rights Council (A/HRC/36/46).

29. Since she assumed the mandate, the Special Rapporteur has witnessed a number of large-scale projects first-hand, including during official visits to Brazil (A/HRC/33/42/Add.1), Guatemala (A/HRC/39/17/Add.3), Honduras (A/HRC/33/42/Add.2), Mexico (A/HRC/39/17/Add.2), the United States of America (A/HRC/36/46/Add.1) and the Sápmi region of Norway, Sweden and Finland (A/HRC/33/42/Add.3). She has heard numerous testimonies and continuously receives information, as part of her duties under the mandate to address communications on alleged

[5] Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

human rights violations, indicating the devastating impacts that certain projects have on indigenous peoples, resulting in serious negative impacts on their systems of government, social cohesion, livelihoods, environment, health and rights to food and water.

30. A crucial underlying cause of the current intensified attacks is the lack of respect for indigenous peoples' collective land rights and the failure to provide indigenous communities with secure land tenure, as this in turn undermines their ability to effectively defend their lands, territories and resources from the damage caused by large-scale projects. This is a concern that has been raised by the Special Rapporteur since the creation of the mandate in 2001. However, the urgency of addressing this situation is taking on a new dimension in view of the rapidly expanding encroachment by large-scale projects. Meanwhile, the important contribution indigenous peoples can make in terms of ensuring better conservation and climate change adaption and mitigation strategies addressed in recent reports (A/71/229 and A/HRC/36/46) cannot reach full potential if indigenous peoples' land rights are still being contested.

31. While some countries have adopted legislation protecting indigenous collective land rights, challenges still remain in ascertaining these rights in practice. Commonly, legislation pertaining to, for example, forestry, mining and the energy sector is not harmonized with indigenous peoples' territorial rights and these rights are disregarded to the benefit of commercial interests.

32. Disregard of indigenous rights of traditional lands ownership breeds tensions, subsequent violence and criminalization, as indigenous peoples become trespassers or illegal occupants of their own lands, subject to criminal charges such as "usurpation" or illegal occupation, and liable to forced evictions and removal from the lands they rely upon for their livelihoods, social and cultural cohesion and spiritual traditions. In the worst instances, escalating militarization, compounded by historical marginalization, results in indigenous peoples being targeted under national security acts and antiterrorism legislation, putting them in the line of fire, at times literally, by the army and the police (A/HRC/24/41/Add.3).

33. The priority of indigenous peoples is the protection of their traditional lands, territories and natural resources. Indigenous peoples question a purely commercial development model which disregards their rights and causes irreparable harm to the environment and the natural resources they depend on for their survival.

34. The Special Rapporteur is particularly concerned over the rapid increase in such projects, commonly funded through international and bilateral investment agreements, as the financial gains primarily benefit foreign investors who have little or no regard for the rights of local indigenous communities and environmental protection. All too often, these projects leave affected indigenous peoples further marginalized and entrenched in poverty as their natural resources are destroyed. Furthermore, the legal construct of projects funded through investment agreements is generally designed to exclude possibilities for affected communities to seek remedies and redress (A/70/301 and A/HRC/33/42).

35. The escalation of attacks against indigenous peoples is occurring in the context of a skewed power structure whereby private companies wield significant influence over States and ensure that regulations, policies and investment agreements are tailored to promote the profitability of their business. The complexity of corporate structures in the global economy represents a further challenge as intricate and opaque layers of ownership obstruct access to information and efforts to hold the private sector accountable for human rights due diligence.

36. The Special Rapporteur is gravely concerned at the global pattern of persistent disregard for the rights of indigenous peoples who are voicing concerns over the negative impacts of development projects on their lands. Such projects are frequently undertaken without consulting with the indigenous peoples concerned, nor is their free, prior and informed consent sought. When measures have been undertaken to consult with indigenous peoples, they have often been culturally inappropriate, lacked good faith and been driven primarily by an incentive to have already elaborated projects rubber-stamped, with no intention of allowing for genuine review or participation in their design and execution. All

too often, such so-called consultations have created divisions and undermined indigenous decision-making institutions.

37. The Special Rapporteur on human rights defenders has warned that the lack of information and transparency and opaque decision-making are not only major flaws in the implementation of large-scale development projects but also lead to the disempowerment and vulnerability of defenders and affected communities and seriously undermine the credibility and legitimacy of both State and non-State actors involved in the projects (A/68/262).

38. Indigenous peoples are increasingly challenging such projects through social mobilization and legal avenues. In retaliation for advocating for the protection of their lands, indigenous peoples are being accused of being obstacles to development and acting against national interests. Indigenous leaders and communities seeking to raise their concerns over the negative impacts of projects on their rights, livelihoods and the environment have been targeted in violent attacks. They have been killed, forcibly displaced, threatened and intimidated and subjected to insidious harassment in the form of criminal charges which are often nebulous, grossly inflated or fictitious. The aim of these attacks, whether violent or legal, is to silence any opposition by indigenous peoples to business interests and to prevent indigenous peoples from exercising their rights.

39. Even when indigenous peoples have managed to successfully challenge projects in court and when injunctions have been ordered, companies still plough ahead with projects in disregard of judicial orders to suspend them. The Special Rapporteur is furthermore deeply concerned that in recent cases, high courts have ordered consultations to take place after the initiation of large-scale projects in an attempt to claim, ex post facto, that international norms have been complied with. This is not in accordance with international standards on consultation and consent (see A/HRC/39/17/Add.3, para. 37).

VI. A global crisis unfolding

40. Recent studies by the Special Rapporteur on the situation of human rights defenders (A/71/281) and the Special Rapporteur on human rights and the environment[6] have raised alerts over "a global crisis" of attacks against environmental human rights defenders, highlighting that many of these defenders are members of indigenous communities.

41. In a report on human rights defenders killed worldwide in 2017, the authors document the murders of 312 defenders in 27 countries and indicate that 67 per cent of the persons killed were engaged in the defence of land, environmental and indigenous peoples' rights; nearly all the killings occurred in the context of megaprojects, extractive industry and big business. About 80 per cent of the killings took place in just four countries: Brazil, Colombia, Mexico and the Philippines.[7] Another source documented 200 killings across 24 countries in 2016 of people defending their land, forests and rivers against destructive industries. The authors concluded that almost 40 per cent of those murdered were indigenous and that Latin America accounted for more than 60 per cent of the killings.[8]

42. The Special Rapporteur has observed a disconcerting escalation of violent attacks through the mandate to issue communications and undertake fact-finding country visits. While the vulnerability of indigenous peoples to attacks while seeking to defend their lands has been a long-standing concern of the mandate, the drastic escalation of such acts in recent years is of grave concern. The Special Rapporteur has recorded a significant and rising number of such attacks in Brazil, Colombia, Ecuador, Guatemala, Honduras, India, Kenya, Mexico, Peru and the Philippines, not an exhaustive list. The same countries have been identified by other human rights mechanisms and civil society organizations that

[6] John Knox, *Policy Brief: Environmental Human Rights Defenders — A Global Crisis* (Versoix, Switzerland, Universal Rights Group, 2017).

[7] Front Line Defenders, *Annual Report on Human Rights Defenders at Risk in 2017* (Dublin, 2018).

[8] Global Witness, *Defenders of the Earth: Global Killings of Land and Environmental Defenders in 2016* (London, 2017).

monitor attacks against indigenous peoples, providing consistent indications that these countries represent particularly worrying situations; authorities of these countries have repeatedly been urged to take action to improve the protection of indigenous peoples but have failed to do so.

43. The situations in the countries named above are particularly worrisome; however, patterns of concern are also found in other countries, and it should be emphasized that the number of reported attacks do not provide the full picture as the ability to report cases is affected by several factors. Among these are the remoteness of indigenous communities, access to means of communication, linguistic diversity and lack of recognition of indigenous peoples as such. The strength of the national human rights civil society groups and the extent to which local human rights organizations liaise with indigenous organizations are other factors which affect reporting. It must be presumed that in large parts of the world, a significant number of attacks against indigenous defenders go unreported and never figure in the media.

44. While the killing of indigenous defenders represents the worst human rights violation, such attacks tend to occur in the context of violence and threats against them and their communities, including enforced disappearances, forced evictions, judicial harassment, arbitrary arrests and detention, limitations to the freedom of expression and freedom of assembly, stigmatization, surveillance, travel bans and sexual harassment.

45. Although some global estimates exist of the number of defenders who have been killed, there is no such information available on the extent to which judicial harassment and criminal charges are levied against indigenous peoples. The criminalization of indigenous peoples occurs in a variety of contexts and relies on a multitude of penal provisions. Commonly, criminal charges are brought against indigenous peoples who oppose large-scale projects and seek to inform and organize their communities, demanding access to information and the right to participate in consultations and to give their free, prior and informed consent. Leaders are targeted as a strategy to supress and silence the entire community.

46. Several situations where private entities have provided false information or filed unsubstantiated allegations against defenders have been brought to the attention of the Special Rapporteur. Reports indicate that judges and prosecutors have contributed to the misuse of criminal law by accepting false testimony, issuing warrants without sufficient evidence, allowing unfounded prosecutions to advance and improperly interpreting the law to incriminate indigenous defenders. While legislators may not be directly involved in criminalization, they contribute through the adoption of laws that unduly punish expressions of rights such as freedom of expression and assembly or pass legislation that includes vague definitions of criminal offences, including serious offences such as terrorism.[9] The Inter-American Court of Human Rights has raised concerns over biases and stereotypes in the reasoning in national jurisprudence regarding prosecutions of indigenous peoples under antiterrorist legislation in the case of the Mapuche people in Chile.[10]

47. Prior to the presentation of criminal charges, defamation and smear campaigns are often directed through social media against indigenous peoples, their leaders and communities, accusing them of being anti-development and acting against the national interest. Hate speech based on racism and discrimination fuels such discourse. In the worst cases, social media portray indigenous peoples as members of criminal gangs, guerrillas, terrorists and threats to national security. Defamation campaigns are often developed by business actors (see A/HRC/39/17/Add.2, para. 67), with the overt or covert support of corrupt government officials whose financial interests are affected by indigenous peoples' defence of their lands.

[9] Inter-American Commission on Human Rights, *Report on the Criminalization of the Work of Human Rights Defenders*, paras. 57 and 63–71.

[10] Inter-American Court of Human Rights, *Norín Catrimán and others v. Chile*, judgment of 29 May 2014, para. 228.

48. Multiple, broad and ill-defined criminal charges are often brought, including trespassing, usurpation, conspiracy, kidnapping, coercion, disturbance of public order and incitement of crime. In several countries a crime of aggravated usurpation is commonly brought against indigenous land rights defenders; transgressors are considered to have been caught in flagrante, which implies a restriction on the right to defence guaranteed in international human rights standards. It is widely reported that states of emergency are declared to suspend judicial guarantees and justify the suppression of peaceful social protests.[11]

49. At times, arrest warrants are issued on the basis of poor evidentiary standards and uncorroborated witness testimonies and where there are no clear links between the charges and the alleged acts. At times, the accusations fail to specify individual responsibility for the alleged acts, for example when arrest warrants are issued for several community members, accusing them all of being responsible for a single criminal act such as a murder without referring to their individual role; this would appear to be a form of collective punishment against an entire community. In some instances, arrest warrants are deliberately not executed but left pending, leaving the indigenous person affected under the perpetual threat of being arrested when it is deemed convenient for the authorities.

50. Procedural guarantees are frequently flaunted and indigenous peoples are particularly disadvantaged as they may not have the means to seek legal counsel. They are unlikely to be in a position to demand the assistance of an interpreter, as in most countries where indigenous languages are spoken interpretation is rarely or not available within the judicial system, nor do ordinary justice systems give much, if any, consideration to the customs, traditions and legal systems of indigenous peoples. The prosecution of indigenous individuals is characterized by prolonged periods of pretrial detention, at times lasting several years, especially in the case of indigenous leaders. The strategic objective is to deprive communities of their voice. Even if they are acquitted, indigenous individuals are rarely awarded remedies.

51. Indigenous institutions and organizations have also been subjected to illegal surveillance, registration and confiscations under various pretexts, such as the control of foreign donor funding. Laws imposing registration requirements and the control of funding of certain organizations weaken the ability of indigenous communities to mobilize and restrict the support they receive from civil society organizations. The strategy of silencing indigenous communities often extends to the civil society organizations and lawyers who seek to assist them: there have been cases of lawyers who represent indigenous communities being physically attacked and even victims of extrajudicial execution.

52. The administrative and legal challenges that indigenous peoples face in such situations require specific and targeted support from civil society and the international community that is different from the support they need when they are victims of threats or physical attacks. Criminalization is a sensitive issue for the international community, which does not want to be seen to be interfering in domestic legal processes. However, when supporting companies or Governments that engage in these practices, international actors such as multilateral development banks, international financial institutions or funds such as the Green Climate Fund risk contributing to and exacerbating criminalization.

53. In the preparation of the present report, the Special Rapporteur received information about hundreds of situations of attacks and criminalization taking place in many parts of the world. To highlight the overall deteriorating situation, she provides recent examples, emphasizing that they are not meant to be an exhaustive but, regrettably, only snapshots of the unfolding crisis. They do, however, give some insights into the current state of affairs.

54. The Special Rapporteur was particularly disturbed to observe the dire situation of indigenous defenders in Guatemala during her most recent official country visit in May 2018. A staggering seven indigenous leaders were killed during and shortly after her visit.

[11] Article 19, *A Deadly Shade of Green: Threats to Environmental Human Rights Defenders in Latin America* (London, 2016), p. 40; and Protection International, *Criminalisation of Human Rights Defenders: Categorisation of the Problem and Measures in Response* (Brussels, 2015), pp. 23–24.

They were killed in different locations by different means: some were shot in the head and in the back while others were stabbed in the throat and their bodies mutilated by machetes. All were representatives of two indigenous farmers' organizations advocating for land rights and political participation. The killings took place in a broader national context of a pernicious closing of spaces for civil society. The President of Guatemala has been publicly hostile to human rights organizations; draft legislation in parliament seeks to restrict the work of non-governmental organizations[12] and social media, driven by private actors, stigmatize indigenous peoples defending their rights, labelling them criminals and terrorists who are anti-development (see A/HRC/39/17/Add.3, paras. 54 and 58).

55. Added to this situation is the escalating number of criminal charges — reportedly in the hundreds — being filed in Guatemala against indigenous leaders and community members. The active participation of private entities in pressing charges implies that prosecutors and judges are colluding with companies and landowners in some of these cases. While in Guatemala, the Special Rapporteur visited several indigenous leaders in prison in retaliation for their land rights advocacy and attempts to litigate against large-scale projects on their territories. Arrest warrants have been issued for vague charges and in some instances on the basis of uncorroborated witness testimonies. The repeated suspension of hearings and the long periods of pretrial detention violate fair trial guarantees (ibid., paras. 52–58).

56. In Kenya, the mandate of the Special Rapporteur has long-standing concerns over the situation of several indigenous peoples, including the Sengwer, the Ogiek and the Maasai, in particular in relation to conservation and climate change projects. In the past two years, there has been an escalation of violence in the Embobut forest where the Kenya Forest Service has repeatedly evicted and burnt Sengwer homes and arrested community members.[13] These acts have taken place despite the fact that the Sengwer are in litigation challenging the evictions and a court injunction has been issued to prevent the evictions in the interim. Several Sengwer have been shot by the Kenya Forest Service, including a Sengwer herder who was killed in January 2018. The European Commission has funded a climate change project in the area, with the Kenya Forest Services among the recipients of funding. The Special Rapporteur issued a public call for the project to ensure respect for human rights and, within days, the European Commission decided to suspend the project pending an assessment of its human rights compliance.[14]

57. In the Philippines, indigenous peoples are stigmatized and suspected of being members of the communist New People's Army and have been subjected to attacks, forced displacements, arbitrary arrests and threats. Militarization has rapidly escalated in recent years and the number of extrajudicial executions has increased dramatically. Indigenous Lumad communities in Mindanao have been particularly targeted.[15]

58. In retaliation for having raised concerns over the escalating violence, in February 2018 the Special Rapporteur was herself mentioned, together with 30 other known advocates for indigenous peoples' rights and some 600 people in total, in a petition submitted by the Department of Justice requesting that a Manila court declare the Communist Party of the Philippines and the New People's Army terrorist and outlawed organizations. The petition claims that the named individuals are known officers and members of the organizations. The Special Rapporteur vigorously rejects these accusations as baseless and irresponsible. The stigmatization and defamation of human rights defenders jeopardize their security. The Special Rapporteur wishes to express her appreciation for the expressions of support and solidarity that she has received[16] and urges the international

[12] Office of the United Nations High Commissioner for Human Rights (OHCHR) and Inter-American Commission on Human Rights, "IACHR and OHCHR condemn murder of campaigners and activists supporting indigenous peoples and peasants in Guatemala", joint press release, 27 June 2018.

[13] See KEN 1/2017 and KEN 7/2017, available at https://spcommreports.ohchr.org.

[14] KEN 1/2018 and OTH 1/2018. See also OHCHR, "Indigenous rights must be respected during Kenya climate change project, say UN experts", press release, 15 January 2018.

[15] PHL 4/2015, PHL 8/2017, PHL 16/2017 and PHL 2/2018.

[16] Including from the Special Rapporteur on the situation of human rights defenders (OHCHR, "Accusations against UN expert a retaliation by Philippines, say fellow rapporteurs", 8 March 2018)

community to continue to monitor the situation and the safety of human rights defenders in the Philippines.

59. In Colombia, most killings of human rights defenders are taking place in rural areas where the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP) was historically present and indigenous peoples are among the most affected (see A/HRC/37/3/Add.3, paras. 8–11). There is a persistent stigma associating indigenous peoples with guerrillas. Since the signing of the peace agreement between the Government and FARC-EP in 2016, some 50 indigenous leaders have been killed. Furthermore, the continued presence of the National Liberation Army and the increasing threats from and attacks by former paramilitary groups aggravate the situation. The Human Rights Ombudsman continues to raise early warning alerts of attacks and threats against indigenous peoples in various regions and the Constitutional Court has warned that a number of indigenous peoples in the country are at risk of extinction.[17] The Special Rapporteur has sent several communications on the killings of indigenous leaders by armed groups[18] and on arbitrary detentions, prosecutions and the excessive use of force by government forces against indigenous protesters.[19]

60. Brazil is by far the most dangerous country in the world for indigenous human rights defenders. During the Special Rapporteur's country visit to Brazil in 2016 (see A/HRC/33/42/Add.1, paras. 18 and 31), community members in Mato Grosso do Sul showed her bullet wounds on their bodies and took her to places where family members had been killed. They also recounted incidents of arbitrary arrests, torture and criminalization of their leaders. Both government and civil society organizations working with indigenous peoples provided her with disturbing accounts of a regular pattern of threats and intimidation by State and private actors.[20] Impunity is pervasive in relation to attacks, killings and intimidation of indigenous peoples and frequently arise in contexts where indigenous peoples attempt to assert their rights over their lands and go hand in hand with the criminalization of indigenous leaders.

61. During her visit to Honduras in 2015 (A/HRC/33/42/Add.2), the Special Rapporteur observed that criminalization frequently occurred in the context of peaceful protests against logging, mining or hydroelectric projects. Indigenous leaders have been tried for offences such as appropriation of land and damage to private property, among others. While in Honduras, the Special Rapporteur met with Berta Cáceres, who was subsequently killed because of her opposition to the Agua Zarca dam. Other indigenous Lenca defenders have also been attacked and killed.

62. The Special Rapporteur, together with other special procedure mandate holders, has sent several communications on the situation both to the Government of Honduras and to financial investors supporting the Agua Zarca dam project.[21] Several financial investors, including the Netherlands Development Finance Company-FMO, the Central American Bank for Economic Integration and Finnfund, suspended funding for the project. After a year-long probe, an investigative panel known as the International Advisory Group of Experts (GAIPE) concluded in November 2017 that Honduran State agents and senior executives of the hydroelectric company Desarrollos Energéticos Sociedad Anónima had colluded in the planning, execution and cover-up of the assassination of Berta Cáceres.[22]

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and from the International Union for the Conservation of Nature, UNEP, the Saami Council, the European Parliament, the Permanent Forum on Indigenous Issues, the Committee on the Elimination of Racial Discrimination, the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, the Expert Mechanism on the Rights of Indigenous Peoples, the Center for International Environmental Law, Amnesty International, Front Line Defenders and others.

[17] See www.defensoria.gov.co/ and Constitutional Court order 004/09 of 26 January 2009.

[18] COL 1/2014 and COL 7/2016.

[19] COL 6/2016.

[20] BRA 7/2015, BRA 1/2016 and BRA 6/2016.

[21] HND 3/2014, HND 2/2016, HND 4/2016 and HND 4/2017.

[22] Roxanna Alphol and others, *Dam Violence: The Plan that Killed Berta Cáceres* (International Advisory Group of Experts, 2017).

63. Concerning India, allegations have been received about the failure to ensure free, prior and informed consent in the states of Jharkhand, Madhya Pradesh, Chhattisgarh and Telangana in the context of logging, mining and conservation projects affecting Adivasi lands and resources. In August 2017, 10 persons, among them 7 women, were arrested when they conducted a peaceful demonstration against the eviction of 40,000 families, among them Adivasi communities, as a result of the megaproject for the construction of the Sardar Sarovar dam in the Narmada river valley.[23] Concerns have been raised by the mandate in north-east India about Adivasis who have been attacked, stigmatized for alleged association with Maoist Naxalites and prosecuted under security legislation, including in the states of Chhattisgarh and Telangana.[24]

64. The Special Rapporteur visited Mexico in 2017 and observed that threats, harassment and criminalization of members of indigenous communities during consultation processes tended to undermine the "free" character of those consultations. For example, members of the Yaqui tribe have suffered various attacks, threats and criminalization for opposing the construction of an aqueduct and a gas pipeline, and for demanding consultations and that their free, prior and informed consent be sought for projects built in their territories. The indigenous leader Mario Luna was detained in 2014 on criminal charges of illegal deprivation of liberty and theft for leading community protests. Since his release he has continued to be threatened and attacked, despite calls from the National Commission for Human Rights of Mexico to ensure his protection and the requesting of precautionary measures in favour of the Yaqui community by the Inter-American Commission on Human Rights.[25] She also observed the serious situation of attacks and violence against indigenous communities in the Guerrero Mountains, the Sierra Tarahumara (Chihuahua) and Chiapas.

65. In Ecuador, concerns have been raised over several situations, including attacks against and criminalization of Sápara leaders including Gloria Ushigua on charges of terrorist acts, sabotage and obstruction for opposing petroleum exploitation on indigenous territories.[26]

66. In Thailand, indigenous livelihoods such as rotational farming and beekeeping have been banned and indigenous peoples have been evicted from lands declared "protected areas" despite evidence of the contributions of indigenous peoples' traditional livelihood practices to biodiversity conservation and climate change mitigation and adaptation (A/71/229, A/HRC/6/15/Add.3 and A/HRC/24/41/Add.3).

67. On 3 May 2017, the Supreme Court of Peru acquitted the Quechua defender Máxima Acuña de Chaupe, who had been charged with illegally occupying land. Due to her opposition to the Yanacocha mining company, she has been the victim of several attacks, intimidation, attempted evictions and judicial harassment. On appeal, she was acquitted of all charges and her land rights were recognized. The Special Rapporteur on the rights of indigenous peoples, together with other special procedure mandate holders, has sent several communications relating to Ms. Acuña de Chaupe's case[27] and has also expressed concern over the conviction of the Aymara leader Walter Aduriri, who was sentenced to seven years in prison in July 2017 on charges of causing disturbances in the context of protests against mining concessions in the Puno region of Peru.[28]

68. In Ethiopia, indigenous Anuak land rights defenders have been prosecuted under antiterrorist legislation and subjected to prison sentences, torture and solitary confinement.[29]

69. In 2012, authorities in the Russian Federation introduced a so called "foreign agent law". According to the law, non-governmental organizations must declare themselves

[23] IND 8/2017 and IND 9/2017.
[24] IND 1/2016 and IND 2/2017.
[25] MEX 10/2015 and MEX 7/2017.
[26] ECU 2/2017.
[27] PER 1/2014, PER 3/2015 and PER 1/2016.
[28] PER 9/2017.
[29] ETH 3/2016.

"foreign agents" if they exercise political activities and receive funds from abroad. The Russian Association of Indigenous Peoples of the North is the main indigenous umbrella organization. In 2012, the Ministry of Justice suspended its operations for three months on the grounds that the organization's rules were not in compliance with the new legislation. In 2014, two indigenous defenders were prevented from travelling from the Russian Federation to New York to take part in the World Conference on Indigenous Peoples and attempts were made to prevent two others from travelling.[30]

70. In 2016, thousands of protestors, including Native Americans, protested against construction of the Dakota Access Pipeline at the border of North and South Dakota, close to the Standing Rock Sioux Reservation in the United States of America. While Sioux leaders advocated for protests to remain peaceful, State law enforcement officials, private security companies and the North Dakota National Guard employed a militarized response to protests. More than 400 people were allegedly arrested, about 90 per cent of them from the Standing Rock Sioux tribe, including Chairman Dave Archambault II. Civil society organizations reported the use of excessive violence and humiliation during the arrests (see A/HRC/36/46/Add.1, paras. 63–74).[31]

VII. Individual and collective impacts

71. The targeting of indigenous persons affects both the individual members of indigenous communities as well as the communities as a whole. The killings of indigenous leaders and community members cause irreparable harm and damage the social fabric of indigenous peoples. Such attacks are undertaken with the express intent to silence their voices, disrupt their organization and impede their ability to express their concerns over matters affecting their communities. The remoteness of indigenous communities and their limited access to the State authorities responsible for providing protection and bringing perpetrators to account leave indigenous peoples particularly vulnerable.

72. The criminalization of indigenous community members also has widespread impacts which affect the accused person, their family and the broader community. Whereas in the case of killings, where the attackers may be acting on behalf of a private actor, in the case of prosecutions, State authorities are clearly and actively responsible for acts which stigmatize indigenous individuals and communities and place them at risk.

73. As previously noted, prosecutions of indigenous community members are often preceded by defamation campaigns, at times with racist or discriminatory overtones, which seek to discredit and undermine the legitimate right of indigenous peoples to participate and voice their opinion in matters that affect them and their lands, territories and resources.

74. At the individual level, by issuing arrest warrants for indigenous leaders on unsubstantiated and vague charges the State seeks to limit their ability to continue their important role as representatives of the community. Stigmatizing indigenous leaders by calling them criminals suggests that they are not reputable representatives of the community, causes personal humiliation and seeks to alienate them within the community and disrupt social cohesion. Further, alleging that they are criminals places them at significant risk of becoming targets of violent attacks. It can also result in restrictions on their freedom of movement and force them to either go into hiding within their territories or to abandon their communities and — depending on the level of threats against them — may oblige them to go into exile.

75. Prosecution of indigenous individuals has significant impacts both on their mental and physical well-being and on their economic situation. They are forced to invest time and financial resources in their defence and to pay for travel expenses, and attendance at court hearings puts them at risk of losing their livelihood. They will have reduced possibilities to defend the rights of their communities, as their resources and energies may be depleted in defending themselves against criminal charges.

[30] RUS 7/2012 and RUS 8/2014.
[31] USA 7/2016 and 14/2016.

76. Indigenous peoples are often held in detention facilities far from their families and communities. Extended pretrial detention and trials have long-term impacts on a family's livelihood, as the detained person may be the primary breadwinner or may miss planting or harvesting seasons. Having witnessed the impacts of prosecutions, other community members may feel constrained to discontinue advocacy on community concerns out of fear of retaliation and of being subjected to criminal charges themselves. In such cases, criminal prosecution will have succeeded in destabilizing the social and political organization of the indigenous communities concerned. Prosecution of indigenous traditional, cultural or spiritual leaders, who play a pivotal role in the continuation of their peoples' traditions and their social, political and cultural institutions, is of particular concern.

77. Even if criminal charges are eventually dropped, pretrial detentions may last extended periods of a year or more and for the individual, the stigma and loss of employment and family and community ties may be long-lasting and difficult or impossible to repair. Ultimately, acts of criminalization that disrupt the participation of indigenous peoples in defining priorities and strategies for the development and use of their lands or territories and other resources will result in increased marginalization and social inequalities.

78. Furthermore, indigenous women who are criminalized suffer gendered impacts. Smear campaigns tend to target indigenous women by spreading rumours that they are dishonourable women of poor reputation who violate indigenous traditions by engaging in public participation and advocacy on community concerns. The aim of such defamation is to disempower and alienate women from their families and communities. While the majority of indigenous individuals who face criminal charges are men, women bear the brunt of their absence as they have to single-handedly assume all responsibilities for securing resources to sustain the family, including food and the means to send their children to school. During her recent country visit to Guatemala, the Special Rapporteur met with numerous indigenous women whose husbands were detained and heard first-hand accounts of the dire consequences for the affected women and the families.

VIII. Prevention and protection measures

79. States must adopt measures to prevent and protect indigenous peoples. It is crucial in this regard to establish accountability for those responsible for attacks against indigenous peoples. The widespread impunity for violent acts against indigenous peoples globally continues to perpetuate their vulnerability and marginalization.

80. To prevent conflicts and attacks, it is imperative that authorities at the highest level recognize publicly the rights of indigenous peoples and, in particular, their right to self-determination, including the right to determine priorities for the development or use of their lands or territories and other resources. As stipulated in article 32 of the United Nations Declaration on the Rights of Indigenous Peoples, States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

81. Enabling a safe environment for indigenous peoples to advocate for their rights is key. Some countries have adopted legislation, policies and programmes to provide protection mechanisms for human rights defenders, including indigenous leaders and defenders. In Latin America, five countries (Brazil, Colombia, Guatemala, Honduras and Mexico) have created national protection programmes which, to varying degrees, provide protection measures for defenders. Recent assessments of these programmes have highlighted the importance of adopting collective and culturally appropriate protection

measures for indigenous peoples and the need to consider prevention aspects and to address root causes of violence (see A/HRC/39/17/Add.2, para. 68).[32]

82. The Special Rapporteur encourages States where protection programmes exist to strengthen them and other States to adopt national policies and legislation in favour of human rights defenders and establish protection programmes. The actual protection measures need to be culturally appropriate, consider gender aspects and be developed jointly with the communities concerned. An example of a measure adapted to the requests of an indigenous community is the designation of local "indigenous guards" in Colombia, with financial support from the national protection programme, which replaces police protection for the beneficiary (see A/HRC/37/3/Add.3, para. 21). The distribution of solar-powered telecommunications in remote areas to enhance protection is another measure useful for indigenous communities.

83. Indigenous communities have developed their own protection strategies and lessons should be drawn from such measures. In some countries, indigenous defenders have created local and regional support networks which allow for reflection, information exchange, legal advice, situation analysis and strategic planning on how to improve protection in their communities.[33] Certain indigenous peoples have established their own monitoring systems in their territories to prevent violent attacks and access by unauthorized third parties. Other indigenous communities have successfully claimed customary land rights and, through demarcation processes, have managed to halt forced evictions and reduce threats against their communities. Still others have managed to halt permits for large-scale projects by means of injunctions where courts decided in their favour on the grounds of the failure to consult them and obtain their free, prior and informed consent. Overall, in order for indigenous-led protection systems to be more effective there is a need to strengthen their own governance systems.

84. At the regional level, the importance of the precautionary and provisional measures requested by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are of significant importance as they underline the State's responsibility to ensure the protection and safety of indigenous communities and individuals in imminent danger. The Special Rapporteur deeply regrets that, despite these measures at the regional level, national protection measures are often inadequate, as sadly illustrated by the murder of several indigenous leaders and by the ongoing attacks and threats, for example against the Choréachi and Yaqui communities in Mexico, all of whom had been granted such measures.

85. The landmark judgment by the African Court on Human and Peoples' Rights issued in May 2017 in favour of the Ogiek peoples in Kenya affirms the Ogieks' collective rights to the Mau Forest and sends a strong signal in the region that indigenous land rights are to be protected and forced evictions halted.[34]

86. On 3 July 2018, the European Parliament adopted a resolution on violation of the rights of indigenous peoples in the world, in which it denounced the continuing criminalization of those who defend the rights of indigenous peoples and the right to land throughout the world. In the resolution the European Parliament emphasized that the European Union and its member States must raise the question of the human rights of indigenous peoples and indigenous human rights defenders in bilateral and multilateral negotiations and diplomatic communications and push for the release of imprisoned human rights defenders, and called for the European Union and its member States to work to

[32] See also Inter-American Commission on Human Rights, *Towards a Comprehensive Policy to Protect Human Rights Defenders* (2017) (in Spanish; English version forthcoming); and Protection International and Center for Justice and International Law, *The Time is Now for Effective Public Policies to Protect the Right to Defend Human Rights* (Brussels/San José, 2017), pp. 106–111.

[33] Peace Brigades International, *I Think, Therefore I Resist: Grassroots Experiences of Alternative Protection and Promotion of Human Rights in the Context of Large-Scale Economic Investments* (London, 2016).

[34] African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya* (application 006/2012), judgment of 26 May 2017.

ensure that third-country Governments provided appropriate protection to indigenous communities and human rights defenders, and bring perpetrators of crimes against them to justice.[35] The Special Rapporteur welcomes the strong public stance taken by the European Union, which can play an important role in preventing violations.

87. At the international level, in March 2018 UNEP adopted a policy entitled "Promoting greater protection for environmental defenders" which identifies violations against indigenous peoples as a key concern which urgently requires prevention and protection measures to be stepped up. The policy provides for the establishment of a rapid response mechanism to speak out on individual cases and to advocate for the rule of law in environmental matters. UNEP simultaneously launched the Environmental Rights Initiative which urges Governments to strengthen institutional capacities to develop and implement policy and legal frameworks that protect environmental rights and that aims to assist businesses to better understand their environmental rights obligations.[36]

88. Another prevention initiative at the global level is the Framework of Analysis for the Prevention of Atrocity Crimes developed by the United Nations Special Advisers on the Prevention of Genocide and on the Responsibility to Protect as a guide for assessing the risk of genocide, crimes against humanity and war crimes from an early warning perspective. With the help of the Framework, various actors can sound the alarm, promote action, improve monitoring or early warning by different actors and help Member States to identify gaps in their atrocity prevention capacities and strategies. The Offices of the Special Advisers use the Framework to collect information and conduct assessments of situations that could potentially lead to atrocity crimes or their incitement.[37]

IX. Conclusions and recommendations

A. Conclusions

89. **States carry the primary responsibility for ensuring that indigenous peoples are able to safely exercise their rights and that accountability is established for violations against indigenous defenders. Concerted action is urgently needed to halt the trend of attacks, criminalization and impunity for those who commit violations against indigenous peoples.**

90. **Large-scale development projects are major drivers fuelling the escalation of attacks and the criminalization of indigenous peoples. The frequent undertaking of such projects without genuine consultation or measures to seek the free, prior and informed consent of the indigenous peoples concerned must cease. Indigenous peoples are not against development, but they reject "development" models which have been imposed on them without their participation and undermine their rights to self-determination and their right to set their own priorities for the development of their lands, territories and resources.**

B. Recommendations

91. **The Special Rapporteur addresses the following recommendations to States:**

(a) **All violent attacks against indigenous defenders must be promptly and impartially investigated and measures taken to provide for effective redress and reparation;**

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[35] See www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0279+0+DOC+XML+V0//EN.

[36] See www.environmentalrightsinitiative.org.

[37] See www.un.org/en/genocideprevention/documents/publications-and-resources/Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf.

(b) A zero-tolerance approach to the killing of and violence against indigenous human rights defenders must be adopted at the highest level of Government. All public officials must refrain from stigmatizing indigenous communities affected by large-scale development projects and those defending their rights, and recognize that their concerns are legitimate components in a process aimed at securing sustainable development;

(c) States should ensure that legislation creates due diligence obligations for companies registered in their jurisdictions and those of their subsidiaries where there is a risk of human rights violations against indigenous peoples;

(d) Addressing criminalization requires a comprehensive review of national laws, the adoption of laws to ensure due process and the revocation of laws and criminal procedures that violate the principle of legality and contradict international obligations. Legislation that criminalizes indigenous livelihoods such as rotational agriculture, hunting and gathering should be repealed;

(e) Legislation and policies should be adopted to expressly support the protection of indigenous defenders and communities. Protection measures should ensure that both individual and collective protection aspects are addressed in practice, in close consultation with the indigenous peoples concerned. Indigenous-led protection initiatives should inform the design of all measures that are adopted by authorities in favour of indigenous communities at risk;

(f) In order to address the root causes of attacks and criminalization, collective land rights of indigenous peoples need to be recognized. This requires, inter alia, accessible, prompt and effective procedures to adjudicate land titles; the review of laws on expropriation; adequate mechanisms to resolve land disputes; effective protection from encroachment, including through early warning systems and on-site monitoring systems; and the prohibition of forced evictions;

(g) Law enforcement officials and prosecutors should be trained on human rights standards and refrain from the criminalization of indigenous peoples who are peacefully defending their rights to lands and resources;

(h) In order to implement the right to consultation and to free, prior and informed consent, such processes need to be based on good faith. It is indispensable that indigenous peoples be afforded genuine participation and access to information in a culturally appropriate manner in a language they understand. This requires their involvement at all phases, including human rights impact assessments, project planning, implementation and monitoring.

92. The Special Rapporteur recommends that independent national human rights institutions closely monitor complaints relating to large-scale development projects through regular dialogue with and visits to affected indigenous communities at risk of attacks.

93. The Special Rapporteur recommends that private companies:

(a) Exert human rights due diligence in all operations and adopt clear policy commitments to that effect;

(b) Perform ongoing human rights impact assessments for all projects, with the full participation of potentially affected indigenous communities;

(c) Avoid any acts of defamation which stigmatize indigenous peoples.

94. The Special Rapporteur recommends that international financial institutions and donors, as well as State agencies that provide international assistance, should adopt and implement environmental and social safeguards that are consistent with human rights obligations, including by:

(a) Requiring human rights impact assessments of all projects;

(b) Including specific protections for indigenous peoples;

(c) Requiring the effective participation of affected indigenous communities;

(d) **Providing for effective procedures to pursue remedies.**

95. **The Special Rapporteur recommends that the international community monitor whether human rights impact assessments are conducted and whether specific attention is given to the participation and protection needs of indigenous communities. Accountability mechanisms should be supported.**

96. **The Special Rapporteur recommends that civil society continue to provide support and legal advice and facilitate the sharing of experiences in relation to protection measures for indigenous people.**